IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

WP(C).No. 26246 of 2006(Y)

PETITIONER:

KURIAN MANI,
PARACKAL HOUSE, KURIANAD P.O., KOTTAYAM DISTRICT.

BY ADV. DR.P.S.KRISHNA PILLAI
SRI.H.VINOD

RESPONDENTS:

1.THE MARANGATTUPILLY GRAMA PANCHAYATH,
MARANGATTUPILLY P.O., KOTTAYAM DISTRICT,
REPRESENTED BY ITS SECRETARY.

2.THE SECRETARY,
MARANGATTUPILLY GRAMA PANCHAYATH,
MARANGATTUPILLY P.O., KOTTAYAM DISTRICT.

3.THE KERALA STATE POLLUTION CONTROL BOARD
REPRESENTED BY THE ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE, KOTTAYAM-1.

4.THE TRIBUNAL FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.

R1-R2 BY ADV.SRI.MATHEW JOHN(K)
SRI.SUJESH MENON V.B.
R3 BY ADV.SMT.K.K.THULASY BHAI,SC,POLLUTION C.BOA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.26246 of 2006

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Dated: 12th January, 2007

JUDGMENT

The grievance of the petitioner who claims to have been conducting a Skin and Hide Collection Centre at Kurianad in Kottayam District within the area of the 1st respondent-Panchayat under the name and style of 'Pavackal Skin and Hide Collection Centre' for the past 40 years is that the 1st respondent is refusing to renew the licence for the petitioner's unit under one pretext or the other at the instance of the interested parties in spite of the renewal of consent by the Pollution Control Board for operating the same upto 31.12.2007 as evidenced by Ext.P1. The 2nd respondent is the Secretary of the Panchayat, the third respondent is the Pollution Control Board and the 4th respondent is the Tribunal for Local Self Government Institutions. The petitioner complains that though his unit has been in existence for the past 40 years, during the last five years the petitioner is being obstructed in the conduct of the unit by interested parties in the locality exerting political pressure and influence over the authorities including the Pollution Control Board, the Panchayat and the local police. At their instance the Pollution Control Board refused to renew their consent for operating the unit subsequent to 31.12.2001. The petitioner had to approach this court

filing two Original Petitions for obtaining directions. Notwithstanding the directions of this court, the Pollution Control Board refused to renew the consent. The decision of the Pollution Control Board was challenged before the Water Appellate Authority, Trivandrum. The Water Appellate Authority disposed of the appeal by passing Ext.P2 order granting opportunity to the petitioner to apply for renewal of consent upon completion of the construction of an effluent treatment plant. The 1st respondent-Panchayat was not entertaining the petitioner's application for renewal of licence. This the Panchayat was doing at the instance of interested parties. The petitioner approached this court filing W.P.C.No.34147/05 which was disposed of by Ext.P3 judgment. Ext.P3 judgment directed the Panchayat to consider and decide upon the petitioner's application for licence within six weeks. After Ext.P3, the Panchayat took the stand that the application submitted by the petitioner for licence was not in proper form. Hence the petitioner submitted a fresh application dated 17.2.2006, Ext.P4. Along with Ext.P4 the petitioner submitted Ext.P5 representation dated 17.2.2006. Thereafter the 2nd respondent issued Ext.P6 communication to the petitioner alleging that the petitioner is conducting the unit in violation of the relevant rules and requiring

him to stop operation of the unit within 15 days and to show cause, if any, against the proposed action within seven days. The allegation in Ext.P6 is that the unit was being operated in a building other than building No.1/47 mentioned in the application. It is contended that it was the very same building which was reconstructed with the permission of the Panchayat and that there are no other buildings in that entire compound. The petitioner points out that on the petitioner's application dated 11.10.2004, the Panchayat issued an order No.M2.8/04 permitting the petitioner to reconstruct the building. The Panchayat instead of taking decision on the application for renewal of licence as directed by this court in Ext.P3 judgment, got the time-limit fixed in Ext.P3 extended. The petitioner alleges that simultaneously, at the instance of the Panchayat, Police started obstructing the petitioner in his conduct of trade relying on Ext.P6. The petitioner approached this court again by filing W.P.C.No.14909/06 seeking directions against the Police. As directed by this court the Pollution Control Board was also impleaded in that Writ Petition. The Panchayat filed a counter affidavit in that Writ Petition claiming that they had already taken decision on the application of the petitioner for licence on 29.4.2006. Ext.P8 is copy

of that decision (which had been produced already along with the counter affidavit as Ext.R3(a). The petitioner points out that Ext.P8 is a concocted document as will be clear from Ext.P6. Ext.P8 decision was taken by the Panchayat Committee behind back of the petitioner. The petitioner also points out that it is for the President of the Panchayat to take a decision on the application for renewal of licence and not for the Committee as per Rule 6 of the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules. Even though objection was taken to Ext.P8 in that Writ Petition, this Court directed the petitioner to challenge Ext.P8 before the statutory authority and disposed of the Writ Petition by passing Ext.P9 judgment. Pursuant to Ext.P9, the petitioner submitted Ext.P10 appeal before the Tribunal for Local Self Government Institutions. The Tribunal disposed of Ext.P10 appeal by passing Ext.P11 order by issuing several directions. The first direction is that the Committee of the Panchayat shall take a fresh decision on the petitioner's application for licence after considering his application dated 19.9.2005, 22.11.2005 and 17.2.2006 after rendering opportunity of being heard to the petitioner and other interested persons. The second direction is that petitioner shall stop the

operation of the Skin and Hide Collection Unit till a decision is taken by the Panchayat pursuant to direction No.1. Pursuant to Ext.P11 order of the Tribunal, the Secretary of the Pancyanat, the 2nd respondent has issued Ext.P3 notice to the petitioner preventing the petitioner's "unauthorised storing and Tanning of Skin". In this Writ Petition the petitioner challenges Exts.P11 and P12 to the extent they restrains the petitioner from continuing with the conduct of his Skin and Hide Collection Centre at Kurianad and for a declaration that the petitioner is entitled to continue operating his unit subject to the conditions contained in Ext.P1 by virtue of Section 236(3) of the Kerala Panchayat Raj Act, 1994.

2. A detailed counter affidavit has been filed by the Panchayat denying the averments, allegations and the grounds raised in the Writ Petition and supporting Exts.P11 and P12 to which the petitioner has filed a detailed reply reiterating his stand. The Environmental Engineer of the Pollution Control Board has filed reports on 15.11.2006 and 27.11.2006. In the first report it is stated that the Environmental Engineer has conducted an inspection of the petitioner's unit on 8.11.2006 for verifying the compliance with the additional safeguard measures directed to their effluent disposal

system. During inspection, the unit was in normal function. It was found that the effluent disposal system with evaporation technique was seen functioning satisfactory. The additional safeguard measures directed were seen complied with as:

i) The entire waste water gets disposed off through evaporation method.

ii) Applying Sodium Hypo Chlorate and Ferrous Sulphate solution with the waste water to eliminate odour problems during evapporation.

iii) The condensed water outlet pipe has been routed back to raw effluent collection tank and to avoid any condensed water discharge from the sunit.

iv) Provided pucca leak-proof plat form with sidewalls to collect the concentrated salt slurry obtained through evaporation of waste liquid for re-use.

It is further reported that the stock rooms and premises were seen kept clean. No significant odour problems could experienced in the premises. From the inspection, it is not anticipated any significant pollution problems if the unit is working in strict compliance with the consent conditions of the Board. In the subsequent inspection report dated 27.11.2006, the first report is reiterated and it is stated that

during the inspection held on 8.11.2006 the unit was open and the waste water disposal system was in normal functioning and the following observations made in compliance with additional measures suggested:

i) The changes suggested in the waste water disposal system has been complied with and the system was found to be working effectively. The condensed water outlet has been connected to the raw effluent collection tank for re-cycling.

ii) The chemical solutions, namely sodium hypochlorate and ferrus sulphate are adding to the raw effluent to eliminate odour problems during boiling and steaming.

iii) Provided pucca leak proof platform with side curb to collect concentrated salt slurry form the boiler for re-use.

The store rooms of skin and the premises of the unit were seen kept clean. No significant odour problems could be experienced in the premises during inspection. In general the unit is found to be working in compliance with consent conditions of the Board satisfactorily.

3. Elaborate submissions were addressed before me by Dr.P.S.Krishna Pillai, learned counsel for the petitioner who would make arguments on the basis of the grounds raised in the Writ

Petition. He referred to Section 236(3) of the Kerala Panchayat Raj Act, 1994, Rule 6 of the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996, Section 60 of the Water (Prevention & Control of Pollution) Act and the various materials placed on record including Exts.P9, P6, P7, P8, P11, P2 and P5. Dr.Krishna Pillai would place strong reliance on the judgment of the Supreme Court in **P.E.K.Kalliani Amma v. K.Devi** (AIR 1996 S.C. 1963) in support of the arguments he addressed in the context of Section 236(3) of the Kerala Panchayat Raj Act, i.e., the provision relating to deemed licence.

4. Mr.Mathew John.K, learned counsel for the Panchayat was equally emphatic in his submissions. Learned counsel would refer extensively to Ext.P11 order of the Tribunal and submit that this court will not be justified in interfering with Ext.P11 in judicial review since Ext.P11 is a well reasoned order. Continuance of the order directing maintenance of status quo will be unjust since admittedly the petitioner is not presently having a current licence and his application for renewal of licence has only been directed to be disposed by the Tribunal. The Tribunal on an evaluation of the entire materials was satisfied that the petitioner should be restrained from conducting the

unit till such time as he obtains the licence.

5. While issuing notice on admission in this Writ Petition, I directed that as regards the conduct of the petitioner's unit by name "Pavackal Skin and Hide Collection Centre", the status quo obtaining as on 6.10.2006 will continue.

6. I have considered the rival submissions made at the Bar in the light of the rival pleadings and the materials placed on record. The submissions of Dr.P.S.Krishna Pillai that Ext.P8 decision dated 29.4.2006 was not taken in due course had some appeal since I feel that if as a matter of fact a decision in the nature of Ext.P8 had been taken by the Panchayat on 29.4.2006, show cause notice dated 2.5.2006 referring to the judgment in W.P.C.No.34147/05 as the first item would not have been silent about Ext.P8. But it is too late for the petitioner to voice such a grievance since as directed by this court, the petitioner already preferred Ext.P10 appeal before the Tribunal which was disposed of by the Tribunal through Ext.P11 impugned order. Dr.Krishna Pillai's argument with reference to Section 236(3), i.e. provision relating to deemed consent also was attractive to a certain extent. But those arguments also cannot be accepted in view of Ext.P10 appeal and Ext.P11 appellate order. So

also it will be difficult to accept the argument of the learned counsel that the Panchayat is bound to follow Ext.P1 consent issued by the Pollution Control Board while taking a decision on the petitioner's application for licence. The Pollution Control Board is certainly the statutory authority vested with powers to issue appropriate directions for preventing and abating pollution related hazards and consents are issued normally by the Board only when its functionaries with technical expertise are convinced that a given unit does not generate pollution beyond permissible limits. But at the same time the power of the Local Authority to take a proper decision on considerations of public interest cannot be lost sight of particularly in the light of the judgment of the Supreme Court in **Action Council v. Benny Abraham** [2002 (2) K.L.T. 228 (S.C.)]. But the Panchayat shall not be totally unmindful all of the interest of the entrepreneur who I notice is an octogenarian. The individual citizens right to carry on lawful avocations in accordance with law should not be allowed to be defeated by irrational mass protests which in many cases may be based on mere apprehensions. I am not inclined to interfere with Ext.P11 since as rightly submitted by Mr.Mathew John it will not be proper to correct a fairly reasoned order like Ext.P11 in exercise of

this court's narrow jurisdiction for judicial review under Article 226 of the Constitution. I direct the Panchayat to comply with direction No.1 in Ext.P11 immediately and dispose of the licence applications referred to in Ext.P11 after hearing the petitioner and anybody else who is concerned within one month of receiving a copy of this judgment. As regards direction No.2, even as I do not find any reason to set aside the same, I notice the consistent stand taken by the Pollution Control Board in this court and direct that the order for directing maintenance of status quo which was passed by this court on 6.10.2006 and is being continued will continue for a period of one more month from today.

The Writ Petition will stand disposed of as above.

srd **PIUS C.KURIAKOSE, JUDGE**